Classification

> "Unfortunately, the system of classification which has evolved in the United States has failed to meet the standards of an open and democratic society, allowing too many papers to be classified for too long a time. The controls which have been imposed on classification authority have proved unworkable, and classification has frequently served to conceal bureaucratic mistakes or to prevent embarrassment to officials and administrations."
>
> From the preamble of President Nixon's June 1, 1972 executive order on classification.

President Nixon, in the preamble to his new executive order on classification, eloquently describes the problems that have grown up in our post World War II system of classification of documents for security reasons. But there is a terrible irony in the fact that this fine rhetoric emanates from the most secretive administration that this country has ever had.

The prelude to Nixon's revision of the classification system may be visionary, but the order itself is, upon analysis, probably even worse than its predecessor. It actually increases the number of persons who have the authority to classify documents, and strengthens the existing system of the systematic withholding of information from the public. It broadens the definition of security information, information to be stamped and hidden, from "national defense" to "national defense or foreign relations," and reintroduces the catch-all term "national security" which had been eliminated by President Eisenhower in 1953.

Congressman Moorehead expressed the wish that the author of the preamble had also written the order itself, but, instead he said, it was "a document written by classifiers, for classifiers."

The new executive order promises to strengthen a system that, it is almost universally conceded, has gotten out of hand. It is a system that is not supported by law and has never received congressional or public approval.

It is a creature of the Cold War, and the cold war thinking which lingers on in the belief that every facet of our worldwide commitments and internal strengths must be kept hidden from a monolithic opposition and even from our own citizens. Never before in the American experience have we permitted a formal system of secrecy in peacetime for civilian agencies. Never before has a major portion of government operations been formally hidden from the American people.

Nixon did not originate this system. He has only accepted it and broadened it. To an administration committed to secrecy, manipulation of information and deceit, the classification system is far too valuable to be tampered with.

The system in its present form originated when President Truman issued an executive order on Septembr 24, 1951 which officially extended the classification system to "non-military agencies" and to "security information." Presidents Eisenhower and Kennedy amended that order in vain efforts to curb a system run amuck, a system which has built up hundreds of millions of documents that no one is supposed to see.

The National Archives contain 160 million pages of classified documents from World War II, and another 300 million for the

years 1946 to 1954. (gov. figures). And the pace of classification has not slackened since.

William G. Florence, a recently retired Air Force official who for his last 26 years of service was responsible for classification policy in the Department of Defense, testified before the Moorehead committee in May that, "Since last summer it has been my personal observation that the rate of classification in the Department of Defense has increased, not decreased."

"At least 99.9 per cent of the existing classified documents do not warrant any classification," he told the committee. "In other words, only about one-tenth of one per cent, or one in a thousand, contain information the unauthorized disclosure of which actually could be prejudicial to the defense interests of the nation." (Congressional Record, May 4, 1972, page E 4707)

There are many obvious examples of the ludicrous degree of classification. One of the service chiefs once wrote a note to the other chiefs of staff to the effect that there were too many papers circulating with a Top Secret classification, and suggesting that the use of TP Secret be reduced. The memo was marked Top Secret.

A recent editorial in the Christian Science Monitor noted:

> "The classic case of overclassification of government documents was Queen Frederika's menu. The former Queen of Greece was given a moderately elaborate dinner at an American military base during her official tour of the United States. A thoughtful officer stamped 'classified' on the menu to avoid the comments which some reporter might otherwise have made on what might have been called a non-democratic event."

But these are simply amusing anecdotes about a system which is far from amusing -- the steady hiding away from the public of the routine operations of much of our governmental activity.

"There are 55,000 arms pumping up and down in government offices stamping 'confidential' on stacks of government documents;

more than 18,000 government employees are wielding 'secret' stamps, and a censorship elite of nearly 3,000 bureaucrats have authority to stamp top secret on public records," Moorehead observed last fall.

He compared the classification system to a "Maginot Line of Paper," but one even more dangerous than France's concrete and steel Maginot Line which gave that country a false feeling of security before it was overrun by the German Army in World War II.

For the classification system is not just a case of monumental waste, stupidity and inefficiency (although it is costing the taxpayers an estimated $50,000,000 for the useless classification of millions of documents a year). It has become, in the words of author David Wise, a form of "institutionalized lying."

"State secrets in Washington are handed around like popcorn by Presidents and lesser officials when it suits their political purpose," Wise said in testimony before the subcommittee. He cited the off-the-record "backgrounders" given by high officials, in which classified documents are instantly declassified when it serves a purpose. In fact, since nothing is classified by law, but only by the President's executive order, the President, and persons he delegates authority to, may declassify anything at any time that they see fit.

Wise cites an example of President Johnson walking on the White House grounds with a group of reporters, and receiving a CIA report concerning some shooting in the Dominican Republic. Since we were intervening in the Dominican Republic and it served his purpose to make it public, Johnson declassified the document marked "secret" on the spot -- read it to the newsmen.

An article in the Christian Science Monitor described the casual handling of defense "secrets" when it serves the

administration's ends:

> "Secretary of Defense Melvin R. Laird loosed a few secrets of middling size upon the Senate and the public recently."

Max Frankel, New York Times Washington bureau chief, filed an affidavit with the subcommittee last year which read in part:

> "Presidents make 'secret' decisions only to reveal them for the purposes of frightening an adversary nation, wooing a friendly electorate, protecting their reputations. The military services conduct 'secret' research in weaponry only to reveal it for the purpose of enhancing their budgets, appearing superior or inferior to a foreign army, gaining the vote of a Congressman or the favor of a contractor ..."

The extent to which one man, the President, has total authority over what can be made public and what is to remain secret, is a fearsome thing. It magnifies the power of the executive all out of proportion to what was envisioned by the Constitution.

The Nixon administration has used that power, to an unprecedented degree, in an effort to manipulate public opinion. There have been several cases when it has withheld information from Congress at a time when Congress was debating an issue of national policy.

1. The Report on SST by the Office of Science and Technology. The Garwin Report, an evaluation of the SST program by the Federal Office of Science and Technology, recommended in 1969 "termination of the development contracts and the withdrawal of government support from the SST prototype program." Despite numerous Congressional requests for the report and a lawsuit under the Freedom of Information Act to compel its release, the White House refused to permit the Office of Science and Technology to disclose its recommendations at the time of the Senate SST debate.

Finally, in April, 1971, the U. S. Court of Appeals in Washington ordered disclosure. The report was devastating. Its recommendation was based on detailed findings concerning the poor market for SST, the likelihood that $3 to $5 billion of government funds would be needed for development, the uncertainty of meeting range, payload and environmental requirements, and the fact that the government could have saved $47 million by terminating the SST contract for default in 1969, because of the contractors failure to meet contract requirements.

2. Report on Environmental Effects of Underground Nuclear Test "Cannikin" on Amchitka Island, Alaska. Undersecretary of State John Irwin chaired a committee which wrote a report on the environmental, defense and foreign relations consequences of the proposed Cannikin underground nuclear test. The report contained critical findings concerning the environmental impact of the test, but it was withheld from Congressional and public scrutiny, despite requests for its release by 33 members of Congress. A lawsuit under the Freedom of Information Act eventually resulted in a decision by the U. S. District Court of appeals to release part of the report, but not until long after the test had been conducted.

The secrecy system clearly denies to the Congress the information that it needs to carry on an informed debate on the issues. Legally, the entire classification system does not apply to Congress. It rests on executive order, and has never been sanctioned by law. Ultimately, if the administration wants to withhold information from Congress it has to depend on the doctrine of "executive privilege."

But as a practical matter, the most serious problem that the secrecy system presents to Congress is knowing enough about

policies to raise questions about them, or to know that information exists so that it can be asked for.

For instance, the Senate foreign relations committee held extensive hearings to try to determine the extent of our commitments overseas. In his testimony to the committee, the United States Ambassador to Laos said that we had no military training and advisory organization in Laos, that there were no U. S. advisors with the Laotians, and that Air America carried equipment only for the AID program, and was not involved in combat operations.

The Ambassador neglected to mention the role of the U. S. Air Force, which had been bombing Northern Laos for five years.

When confronted with this fact, the former Ambassador said that he did not discuss the bombing because he was not asked any direct questions about United States operations in Northern Laos. Senator Fulbright remarked, "There is no way for us to ask you questions about things we don't know you are doing."

The Senate committee finally uncovered the fact, to its consternation, that we had been carrying on a secret war in Laos for five years. This is the committee on foreign relations of the United States Senate, charged in the Constitution with major foreign policy responsibilities.

Our classification system has become a monster. It is a formal system of secrecy, controlled by the President, which has no place in an open, democratic society. Something must be done to remedy the "information gap" now depriving Congress and the American people of necessary information to make informed decisions.

Richard Nixon promised "open government" in 1968, but

has given us the secretive maneuverings of a closed corporation, the manipulations of a new oligarchy.

I will not give you empty promises for an open government. I will commit myself to a series of specific steps to dismantle this machinery of secrecy.

The new administration elected this fall will:

1. End all "background briefings" in which information is supplied on the condition that the source is not disclosed. All such briefings will be for attribution to the official who conducts them.

2. Allow the classification of documents only upon the order of the President, the Vice President, and officials confirmed by the Senate, and stipulate that a decision to classify must be made within 30 days of production of the document.

*3. Support legislation to create a Classification Review Commission along the lines proposed by Cong. Moorehead. Such a commission would be made up of members appointed equally by the House, the Senate, and the Presidency, and would have the authority, if necessary, to overrule the executive and provide classified and unclassified material to the Congress, committees of Congress and the Comptroller General, in order that the Congress may fully and properly discharge its constitutional responsibilities.

~~declassify~~

* - This is a new proposal.

4. Propose and support legislation, similar to the Moorhead bill, to provide for automatic declassification so that, as a rule, classification will not last more than two years.

I will take these steps as part of a continual effort to return our government to the principles of our Constitution. I will act in the deep conviction that Thomas Jefferson was describing the essential element of a Democracy when he said:

> "I am persuaded myself that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will soon correct themselves. The people are the only censors of their governors."

Secret Government

Freedom of Information

> "No one more sincerely wishes the spread of information among mankind than I do, and none has greater confidence in its effect towards supporting free and good government."
>
> Thomas Jefferson

When people talk about the growing problem of government secrecy, they are usually referring to the formal system of secrecy -- the classification of documents.

But there is another whole area of secrecy that has nothing to do with national security or classified documents. It is the secrecy of the bureaucrat who doesn't want to be bothered with inquiries from the public, of the administrator anxious to cover up a mistake, of the government official who, increasingly, takes the attitude that the government's business is none of the public's business.

Government has probably always tended towards this kind of arrogance. John Shattuck of the New York ACLU suggests in a proposal for a conference on secrecy in government that the subject is older than the walled palaces of the kings of Mesopotamia. The really surprising thing, he points out, is our firmly held belief in this country, based on the convictions

of the Framers of the Constitution, that the people do have the right to know, that government in fact should serve the people, not vice versa.

Growing governmental bureaucracies have in the last 30 years compounded the problem of access to information, and Presidents, with direct executive authority over the agencies of government, have been reluctant to approve measures for openness in government which would tend to decrease their own power. The House Subcommittee on Government Operations held eleven years of studies and hearings before finally proposing the current Freedom of Information Act, which, with modifications worked out with the White House, became effective on July 4, 1967.

The act provides for the first time that any person may request information from the government, and that the burden is on the government to justify the withholding of information.

Does this mean that we now have freedom of information? Far from it. Congressmen involved with the act find that, on balance, it probably has done some good. But most of all, the act has exposed the virulance with which the public agencies are prepared to fight the release of information. Over 2,100 requests for information have been turned down since the act was enacted. Congressman William S. Moorehead, Chairman of the House Subcommittee, reported in March:

"Many government agencies seem to be doing everything possible to ignore the Freedom of Information Act. Some agencies -- and the Air Force is the worst offender -- try to make their information operations look good by claiming that thousands of requests for routine government documents are actually demands under the Freedom of Information Act. Other agencies -- for example, the Civil Service Commission -- keep no records and apparently have no interest in implementing the law." (page 1332, Hearings of Subcommittee on Government Operations, March 6-17, 1972)

The Nixon administration took office just six months after the law took effect. It is, therefore, difficult to compare its record with any other. But it is fair to say that the Nixon Administration, which assumed office with promises of "open government", has in practice gone to extremes to fight disclosure of virtually any kind of significant public records, often on the most tenuous legal grounds.

This is a reflection of the larger problem of government secrecy. What the agencies, administrators and bureaucrats refuse to give to the public is directly related to the tone set by the federal executive. In this administration, the tone has been set by manipulation and intimidation of the press, the withholding of information from Congress, the abuse of executive privilege and the systematic overclassification of documents. In this context, with information being seen as a tool to promote political ends, it is no surprise that administrators feel pressure to resist any effort to disclose information sought by the public.

There is the case of Mr. Hugh James of Nashville, Tenn. A little over two years ago, he moved into a house that had been appraised by the FHA at $10,800. There were cracks in the walls and rain would sweep in through the cracks. The insulation was a shambles. Subsequent appraisals put the true value of the home in the neighborhood of $4,000.

Mr. James is blind, his wife is blind and their eldest daughter is blind.

Mr. James, who works as a mechanic for the state, went to the local FHA office three times to tell them of his plight. His attorney, who was actually the attorney for the Blind Service Section of the State Department of Public Welfare, asked FHA for a copy of the original appraisal of the home. He was told he had no right to see it, and that it was in Washington buried in some files.

The Nashville Tennessean took up the case, and set out to determine if Mr. James had been deliberately swindled. FHA refused to cooperate. It refused to release the appraisal. At one point, it said that if a reporter would be in Knowville, some 200 miles away, on a certain day, the newspaper could have a copy of the appraisal. When the reporter showed up, he was told the department had changed its mind.

Finally, the newspaper filed suit under the Freedom of Information Act. The U. S. District Attorney represented HUD, and took as many delays as they could. When the first hearing

was finally held, a representative of HUD was flown in from Washington to tell the court why appraisals had to remain secret. If mistakes were made, he said, it was the mistake of the department.

"Every time he makes an appraisal and makes a mistake, if he does in fact make a mistake, he is subject to public censure rather than the censor of his employer," the HUD official testified, giving a clear idea of who this official felt government officials were responsible to -- not the public, but the federal bureaucracy.

The judge ordered HUD to give Mr. James a copy of the appraisal without the name of the appraiser.

Eventually, the U. S. District Court of Appeals reversed the decision and the name of the appraiser was released. The appraiser told the newspaper that he had wanted to come forward but that his superiors in FHA told him to remain silent. He said that he felt HUD policy had been wrong when he appraised the James house, and that he had simply carried out that policy and recommended that an FHA mortgage not be granted for the house. He said that the publicity on this and other cases had, fortunatel caused HUD to change its methods of appraisal.

In the meantime, as a result of the publicity surrounding the case, the FHA office found Mr. James another house.

This is not an example of the government trying to retain confidential information, but of an agency trying to cover up its mistakes. And I don't think there's much question but that the

airing of this case, and similar cases in a number of other cities, has benefited the public. The lengths to which HUD went to conceal information makes it clear that the department has no conception of the intent of the Freedom of Information Act. (page 1302, subcommittee hearings, and telephone interview with the Nashville Tennessean.)

There is a long list of similar cases of government agencies fighting tooth and nail against the intent of the Freedom of Information Act.

1. In Philadelphia, in another case involving HUD, a battery of government lawyers argued that a newspaper did not have the right to see appraisal reports, although the newspaper had uncovered serious evidence of systematic fraud. Speculators were buying run-down houses in the city, making a few cosmetic repairs, and, with an FHA insured mortgage, selling them at inflated prices to the poor. The government again argued that it was protecting the appraisers from "public criticism and castigation."

But the judge ruled:

"We are confronted here by alleged improprieties by public officials or private citizens paid with public funds, and if the misdeeds were perpetuated, the public has a right to know about them." (page 1294, subcommittee hearings)

2. R. Peter Straus, the publisher of Editor's report, has been trying for months to obtain a copy of the "black list" maintained by the FCC. The Federal Communications Commission has testified to a Congressional subcommittee that it keeps a computer printout of 10,900 names of individuals and organizations who will have to be especially screened if they apply for a license. The list includes the names of people who have given bad checks to the commission or operated without a license or things like that. It also includes names fed in by the FBI of alleged "subversives", and names fed in by the IRS, the CIA and the House Committee on internal security. Mr. Straus wants the list in order to inform his readers on what basis their applications may be subject to special scrutiny. He wrote to the FCC that "speculation of the Commission's reasoning runs from convictions of fraud and grievous misdealings with the Commission to allegedly subversive political activity and party convictions."

The issue here is not whether a government agency has the right to keep such a list, but whether it is to be our government's policy to maintain secret blacklists. An applicant for an FCC license has the right to know if his name appears on such a list, and on what basis it was placed there. (page 1284, subcommittee hearings)

3. There is a suit now pending under the Freedom of Information Act seeking information about the administration of the Medicare program. The Social Security Administration

has contracted for the private, non-profit Blue Cross system to administer much of the health care program. Despite reports of cost overruns, incompetence and even possible corruption, the Social Security Administration has refused to make public its audits of the program. It maintains that these audits are "internal correspondence." I think it is clear that a public health program, supported by tax money, must be subject to public scrutiny. (interview with James Ridgeway).

Sen. Abraham Ribicoff has a disclosure amendment pending which would require that all non-personal Medicare records be made available to the Public. (Baltimore Sun, Tuesday, March 9)

(Other possible examples include Schechter vs. Richardson, asking for inspection reports of the Social Security Administration after a nursing home fire killed 32 patients in Marietta Ohio in January 1970, and Shuck vs. Butts & Cossock, involving the reports by the Inspector General of segregated 4-H Clubs funded by the U. S. Department of Agriculture.)

These examples, and hundreds of cases like them, clearly demonstrate our government's bureaucratic attitude towards the private citizen. Government may at times be more efficient if it doesn't have to worry about, is not answerable to the public. But our form of government, founded in the democratic belief that ultimate authority must rest with the people, must be the

servant of the people, not their master. James Madison said 200 years ago:

"A popular government without popular information or the means of acquiring it, is but a prolog to a farce or a tragedy or perhaps both."

Congressman Moorehead has proposed amendments to the Freedom of Information Act which would speed up the agencies of government in replying to requests for information and reimburse the citizen for court costs if he must spend thousands of dollars to pry information loose from the bureaucracy.

But it seems to me that we must go further than that, that we should establish a system of ombudsmen or public advocates, that would be available to citizens all around the country who were seeking information from their government. These advocates could perhaps be a branch of the Classification Review Commission which Congressman Moorehead has proposed to facilitate the flow of government information to Congress. (H.R. 15172)

Ideally, these advocates could staff neighborhood information centers and serve to obtain information for citizens on the myriad of government programs and benefits available to the public, as well as to dig out the more hidden records of the agencies. A system of some 2,500 of such centers in each region of the country, and each neighborhood in our cities, would do much to make the government again the servant of the people.

Secret Government

Memo re Censorship

The House subcommittee on government information has some information on the Nixon administration's plans for censorship which is apparently really frightening stuff.

The committee had taken testimony on the status of our censorship plans, and was apparently satisfied that there were plans to impose World War II type controls only in the event of nuclear war.

Then came the arrests in connection with the bugging of the Democratic National Committee. One of those arrested, James W. McCord Jr., was identified as a reserve officer in the Special Analysis branch of the Office of Censorship. (He was also the security chief for the Republican National Committee and the Committee to Re-elect the President, and formerly held a similar post with the CIA.)

Sam Archibald, head of the Freedom of Information Center in Washington, says that the committee learned as a result of the surfacing of McCord that the Censorship bureau was developing a watchlist of people and things to watch for in the event of censorship being imposed. This included controls on travelers, the mail and the media.

The subcommittee had never even heard of this "watchlist" or the "standby" branch of the Censorship office. They demanded additional information from the office and received:

1) An executive order from President Nixon which provides that censorship can be imposed at any time without any statutory authority.

2) The official censorship plan, which provides that censorship may be imposed in a "brush fire" war as well as a "national emergency". This is in direct contradiction to the testimony the committee had received, which was

that only in nuclear war could it be imposed. These reports have not yet been made public.

This may be of more interest in connection with the bugging episode than in connection with secrecy. In either case, I can get no further on it. Archibald (202 544 5656) and Bill Phillips of the subcommittee (202 225 3741) have the information and are prepared to cooperate with Senator McGovern in releasing it.

Secret Government

Memo re. Dikes

Are United States planes deliberately bombing the dikes of North Vietnam? Has this country adopted a policy of bringing flooding and starvation to the North Vietnamese?

I do not know the answer to that question. None of us does. We are engaged in an undeclared war in Indochina, and the record of secrecy and deception in that war is not reassuring.

We do know that some of the dikes along the Red River in North Vietnam have been bombed, whether accidentally or not. We do know that our forces have been engaged in seeding the clouds over North Vietnam, although to what ends and to what extent we do not know.

We do know that North Vietnam is now at the height of the flood season, and that there will be heavy pressure on the dike system for the coming two months. We do know that some 15,000,000 people live on the plain of the river, in one of the most densely populated areas in the world.

We do know that the Secretary General of the United Nations and the Secretary General of the World Council of Churches have both called on President Nixon to halt any bombing in the area of the dikes. And we know that the President's response has not been reassuring.

I look upon the coming weeks with trepidation. For it seems to me there is evidence that the United States is skirting around the edges of a policy that, not so long ago, at the Nuremberg trials, was considered a war crime. The destruction of the Dutch dikes was one of the actions for which the Nazi occupation chief

was ordered hung at Nuremberg. And yet President Nixon on April 30, 1972 described the dikes as "a strategic target, and indirectly a military target."

I believe that President Nixon has an obligation to let the American people know exactly what our policy is in connection with the dikes. I believe he has an obligation to stop all bombing in the Red River area, and to give a full accounting of any cloud seeding operations we may be carrying out in the region.

Destruction of the dikes may have been considered a war crime after World War II, but it is an old and persistent idea in the military planning for the Vietnam war. The Pentagon Papers reveal that bombing these dikes has been under consideration since at least 1966. A memo from William Bundy in May of that year listed "extremely sensitive targets."

"For example," his memo said, "this list would include mining of Haiphong and bombing of dikes and dams..."

Deputy Defense Secretary McNaughton had this to say in a memo advising against direct attacks on civilian centers:

> "Destruction of locks and dams, however-if handled right-might (perhaps after the next pause) offer promise. It should be studied. Such destruction does not kill or drown people. By shallow-flooding the rice, it leads after time to widespread starvation (more than a million?) unless food is provided-which we could offer to do at the conference table."

This Pentagon planner had in mind not the complete destruction of the dams and dikes, which the air force could apparently accomplish in 48 hours, causing serious floods and

thousands of drowning victims. Such an action would be too direct and inhumane. But the bombing of selected dikes, "if handled right" is what the memo says, could flood the rice paddies and bring famine.

Has President Nixon adopted both the "extremely sensitive targets" discussed in the Pentagon in 1966?

Le Monde, the respected French journal, described in an article last June a tactic which it argues was being employed in our bombing:

> "Some very large bombs are dropped, not directly on the dikes but at a certain distance from them on the cushion of eroded soil upon which the river flows. The enormous excavations resulting have the effect of loosening the underlying base. This could result in the rivers overflowing the plain.
>
> "The flooding of the plains of the North could be indirectly caused, and attributed to a series of 'natural accidents.'" The article continued:
>
> "We will hear that the North Vietnamese should have seen to the stability of their dikes more than to combat."

That prediction in Le Monde was seemingly fulfilled the following month, when State Department officials told reporters on July 5 that there was a strong likelihood that North Vietnam would be flooded later this summer.

They were quoted in the New York Times as saying there is a "higher than normal probability" of flooding, and that the floods would be due to inadequately repaired dikes.

Numerous eyewitness accounts have confirmed that some of the Red River dikes have been bombed, the most recent being

columnist Joseph Kraft of Publishers Hall Syndicate. The Administration has continually maintained, however, that the dikes are not "targeted," and are only bombed by accident, or if an approved target happens to be located near one of the dams.

President Nixon originally appeared to go well beyond this position. In his remarks to a group of rich Texans at former Treasury Secretary John B. Connally's ranch on April 30th, he responded to a question about the dikes by saying:

> "Now, the problem that is raised with regard to dams and dikes is that, while it is a strategic target, and indirectly a military target, it would result in an enormous number of civilian casualties. That is something we want to avoid. It is also something we believe is not needed.
>
> "Just let me say that as far as the targets in North Vietnam are concerned," he continued, "that we are prepared to use our military and naval strength against military targets throughout North Vietnam, and we believe that the North Vietnamese are taking a very great risk if they continue their offensive in the south. I will just leave it there, and they can make their own choice."

This certainly sounds like a veiled threat. At his last press conference on June 29, the President was asked about reports of dikes having been bombed. He replied, "We have checked these reports. They have proved to be inaccurate."

He went on to say that "We have had orders out not to hit dikes because the result in terms of civilian casualties would be extraordinary." But then, making the issue murky once more, he added that he was opposed to any orders that would involve civilian

casualties "if they can be avoided," and said that "military targets only will be allowed."

Since he had previously referred to dikes as "indirectly a military target" his disclaimer still left some confusion.

Defense Secretary Laird further confused the issue by stating on July 18 that dikes were in fact targeted in conjunction with other targets:

> "If there is an antiaircraft weapon squadron or system that is being targeted and it is located on a dike or a dam or if there is a SAM missile site that is firing at our particular aircraft, that particular site may be targeted."

But surely the United States Air Force would not be ignorant of the possible effects of destroying dikes, even as a side effect of bombing defensive missile sites on those dikes.

The Administration is trying to maintain that any talk of bombing the dikes is part of a North Vietnamese propaganda plot. The Administration continues to maintain that the North Vietnamese have not adequately maintained their dike system. The Administration has still never disclaimed its continued bombing of dikes, as the result of accidents or because other targets are located near or on them.

If the floods come in the coming months, the United States will not be able to disclaim responsibility. I get the impression that President Nixon is most concerned, not that the floods may come, but that the American role in softening up the dikes is coming to light through the first person accounts of visitors to North Vietnam.

Unless the President publicly announces that there will be no more bombing in the Red River delta, unless the President

spells out our secret rainmaking efforts in Indochina, we cannot disclaim responsibility for the floods.

Unless he does so, the American people will have to wonder if the blockade of the North Vietnamese ports and the bombing of selected dikes may not be part of Nixon's secret plan to end the war - by attempting to starve out the North Vietnamese with a policy of famine.

The American people deserve a full explanation.

Secret Government

Executive Privilege

There is a secret government inhabiting the White House - an infrastructure which has sprung up within our established political system. Foreign policy decisions are no longer made by our State Department. They are made by Henry Kissinger, a Presidential adviser. The ITT case was not settled by the Attorney General's office, but by Peter Flanigan, a Presidential adviser. This elite White House staff, more than doubled in size since the Johnson administration, is shielded from public view, from public accountability, by the constantly invoked doctrine of executive privilege - a kind of royal decree whereby Nixon says these are his men and what they do or say cannot be examined by Congress, much less the public.

It is a form of government new and alien to our democracy, and one that is straining the whole tradition of government of, by and for the people. Its cardinal rule is secrecy. Behind that shroud Nixon and his staff, impervious to public scrutiny, can plan an invasion of Cambodia, make a deal with ITT, or chart the manipulation and intimidation of the nation's press.

Many of the current problems of our government are merely the extensions of past trends. But the secret operations of the White House are part of a deliberate, planned strategy to acquire power for the executive at the expense of our system of checks and balances - at the expense of Congress, the Judiciary and the people.

On April 7, 1969, President Nixon wrote to the House Government Information subcommittee:

"I want to take this opportunity to assure you and your committee that this administration is dedicated to insuring a free flow of information to the Congress and the news media - and thus to the citizens. You are, I am sure, familiar with the statement I made on this subject during the campaign. Now that I have the responsibility to implement this pledge, I wish to reaffirm my intent to do so. I want open government to be a reality in every possible way."

The rhetoric is good. But when the committee asked for reports on the U. S. aid program to Cambodia - (reports which describe the very goals and objectives of our U. S. assistance program) reports that had been routinely granted under the past three administrations, Nixon invoked "executive privilege," in an unparalleled extension of that constitutionally weak doctrine.

Compare the campaign rhetoric with his March 15, 1972 order to the Secretary of State and the U. S. Information Agency in connection with the Cambodia reports:

"I, therefore, direct you not to make available to the Congress any internal working documents concerning the foreign assistance program or international information activities, which would disclose tentative planning data, such as is found in the country program memoranda and the County Field Submissions, and which are not approved positions."

Executive privilege is nowhere mentioned in the Constitution as a Presidential power to deny information vital to Congress. Former Supreme Court Justice Arthur J. Goldberg says "no such

power exists." Most Constitutional authorities agree, although some would argue that executive privilege, as it exists, may protect personal exchanges of opinion between a President and his staff under the separation of powers doctrine.

But there was no question of communication or advice to the President in connection with the Cambodia reports. The President invoked executive privilege because Congress was threatening to cut off all aid to Cambodia in exasperation with the new secrecy of the administration. And once the President had done so, what could Congress do short of directly challenging the authority of the President?

There was no question of personal communication when executive privilege was invoked in the ITT case to prevent Peter Flanigan from testifying. Flanigan had already said he had not communicated on the matter with the President.

There is no question of personal communication when Henry Kissinger, the chief architect of our foreign policy, refuses to testify before any Congressional committee about anything, on the grounds that he is a Presidential adviser and therefore not answerable to Congress.

Constitutional experts are concerned that we may be nearing a Constitutional crisis on this issue of executive privilege. Justice Goldberg commented:

> "Without adequate information from the executive branch of government, Congress cannot appropriately perform functions entrusted to it under the Constitution. Moreover, nothing can contribute more to the weakening of Congress and to an undue concentration of power in the Executive than the Executive's recalcitrance in appropriate sharing of information with Congress."

The secretiveness of the Nixon administration is not an accidental or haphazard thing. It is based on a theory of government which, as we might expect, is not spoken about in public by the administration.

Henry Kissinger expressed some of his observations on how government worked four years ago in an essay for the Security Studies Project of the University of California:

> "Some of the key decisions are kept to a very small circle while the bureaucracy continues working away in ignorance of the fact that decisions are being made...One reason for keeping decisions to small groups is that when bureaucracies are so unwieldy and when their internal morale becomes a serious problem an unpopular decision may be fought by brutal means, such as leaks to the press or Congressional committees. Thus the only way secrecy can be kept is to exclude from the making of the decision all those who are theoretically charged with carrying it out."

This calm description of government manipulation has become a self-fulfilling prophecy under the Nixon system. The centralization of all decision-making within the White House has led to less and less information being circulated within the branches of government themselves, to say nothing of Congress and the public.

Now it becomes more clear why the number of Presidential advisers has grown from 21 in 1968 to 48 in 1972, why the White House staff has grown from 273 to 600 in the same period.

Alan C. Swan of the University of Chicago described the problem this way:

"What seems to be fast approaching is a government controlled by exclusive decision-makers, untouchable by either the Congress or perhaps even the departmental bureaucracy. The most notorious of these elite policymakers is Dr. Henry Kissinger and his National Security Council staff which has usurped the field of American diplomatic affairs."

Dr. Swan notes that they are now enclosed in the protective secrecy of President Nixon's executive privilege:

"Not only has Kissinger and his staff undermined the State Department in this policy sphere," he continues, "but Congress cannot compel him or any member of the NSC to provide an account of any aspect of their activities."

This is not simply a problem of information. It is a problem of accountability. It is a problem of power growing unchecked by the countervailing forces of Congressional participation, and public debate. It is truly a new form of government which is hard even to describe because of its secrecy -- which must be pieced together from scraps of evidence gathered when it is forced into the open.

While Kissinger is running his own secret Department of State, it appears that things are similar on the domestic front. Sen. Ernest F. Hollings (D-S.C.) says that it used to be if he had a problem with food stamps he went to the Secretary of Agriculture, whose department has jurisdiction over the program. Now he says he has to go to the White House and see one John Price.

"If I want the latest on textiles, I won't get it, from the Secretary of Commerce, who has the authority

and responsibility. No, I am forced to go to the White House and see Mr. Peter Flanigan. I shouldn't feel too badly. Secretary Stans has to do the same thing," the Senator said.

Even some of the officials in the executive agencies are upset by the growing authority of the White House staff. A top Commerce Department official told the New York Times in March, "The business community pays no attention to this department; if you have a policy problem you go see Peter Flanigan."

"Peter Flanigan," this official said, "is to the Department of Commerce what Henry Kissinger is to the Department of State."

It seems clear that the White House staff is assuming an unprecedented prerogative in terms of information, decision-making and policy priorities.

"It is not merely a shield of secrecy," Swan wrote. "It is that the key decisions -- the high and delicate matters of state -- must essentially remain open until Congress speaks and cannot end with the deliberative processes of the White House."

What is this doctrine of "executive privilege"?

Counsel for the President, John W. Dean III, argued in the Flanigan case that his immunity from Congressional testimony was grounded in "long established historical precedent." What are these precedents? The best that former Assistant Attorney General William Rehnquist (now a Nixon appointee on the Supreme Court) could muster dated back to the Truman Administration. The "long established historical precedent" turns out to be 22 years old. In that case cited by Rehnquist, it was argued that Presidential

advisers "ought not to be interrogated as to conversations... with the President or advice given or recommendations made to the President."

But there was no claim of discussions about the ITT case, so the claim of immunity for Flanigan constitutes a brand new "historical precedent," mere membership on the White House staff. Professor Raol Berger says that this is only "the most recent example of how history is being manufactured under our noses."

The truth is that executive privilege is an unfounded doctrine which originated in efforts by recent Presidents to save themselves embarrassment. President Eisenhower first invoked it broadly in the Army-McCarthy hearings in May of 1954. Its invocation was not involved in protecting the country from the onslaught of McCarthyism. It was invoked by the President to cover the testimony of Army Counsellor John Adams.

In the words of Jacob Scher, "The conference Adams attended involved no state or military secrets: it concerned only possible sordid compromises the administration tried to work out with McCarthy and Cohn."

Executive privilege had been invoked more informally in the Truman administration, and in subsequent administrations. But never has it been construed to mean that the President can deny Congress access to the nation's policy-makers, or to any document that he decides he would rather withhold.

There is a growing awareness of the threat to our traditional form of government among members of Congress. Senator Sam Ervin, Jr., as Chairman of the Subcommitee on Separation of Powers of the Senate Judiciary Committee, has dealt with the problem in extensive hearings. He observed in a recent article:

"The practice of executive privilege, it seems to me, clearly contravenes the basic principle that the free flow of ideas and information, and the open and full disclosure of the government process, are essential to the operation of a free society. Throughout history, rulers have imposed secrecy on their actions in order to enslave the citizenry in bonds of ignorance. By contrast, a government whose actions are completely visible to all of its citizens best protects the freedoms embodied in the Constitution."

President Nixon promised the American people "open government" when he campaigned for the presidency in 1968.

He apparently thinks that open government means those special press kits, paid for by the Republican National Committee, that Director of Communications Herbert Klein dispatches to the media around the country to explain Presidential positions. He apparently thinks that the flimflam of public relations men and advertising executives can be used to obscure the operations of a new autocracy.

I pledge to you a return to truly open government, and I go beyond rhetoric in making these specific committments:

1. The new administration elected this fall will dismantle the machinery of secrecy and return to the governmental agencies, the Congress and the people their Constitutional role in government.

2. Affairs of state will be determined by the State Department, affairs of commerce by the Commerce Department, affairs of labor by the Labor Department.

3. Congress will have full access to all reports and studies conducted for the formulation of policy, and to the persons who make policy decisions. There will be no invoking of executive privilege to shield an elite White House staff.

4. The people will be fully informed of the processes of government, as they must if we are to remain a free and open society.

Secret Government

Memo re Press

There is something funny about the Nixon administration's constant efforts to look good. Take, for example, the Treleaven report.

The Department of Interior hired Harry Treleaven, a well-known political publicity expert, for $121.00 a day, to prepare a report on the department's information and public relations activities. A questionable use of taxpayer's money, perhaps, but surely not a serious offense.

The press was interested in taking a look at the report, but the department demurred. Finally, following a Congressional hearing, the Department agreed to make public the first 18 pages of the 85-page report, except for one censored paragraph.

The Freedom of Information Center of the University of Missouri formally requested that the missing paragraph be made public. Department solicitors replied:

> "The paragraph deleted reflects Mr. Treleaven's views with respect to an official of this department and is deleted from the balance of the information disclosed because it could result in personal embarrassment to the individual without serving any useful purpose."

Well, it was apparent that the paragraph didn't involve national security, and the Nixon administration was, for a change, not invoking executive privilege. It was no doubt just a question of some personal details about a member of the department.

The paragraph may have been censored, but copies of the full Treleaven report were circulated within the department and among some members of Congress, and the Freedom of Information Center managed to get its hands on an uncensored report.

The Center then wrote a letter to Department of the Interior Secretary Rogers C.B. Morton, pointing out:

> "The person who would be embarrassed by the censored paragraph is you, Mr. Secretary. The embarrassing information is that you are the most photogenic member of the Nixon Administration...."

And, sure enough, that was what the paragraph was about, according to the Freedom of Information Center. That is what the Nixon administration has researched for its departments of government. The paragraph read:

> "A part of greater use of television should be a continuing effort to get the Secretary visually involved in newsworthy events (which will provide good picture material for the print media, too). Secretary Morton is not only the most photogenic member of the Administration -- but he's also able to participate physically in all kinds of outdoor situations and look natural."
>
> "It's important," the censored paragraph continued, "that the communications program make full use of this, because it's a way of making sure that the Secretary's statements get maximum exposure, as well as building valuable goodwill for the Department and the Administration. Information officers in each of the Bureaus should be required to submit, on a regular basis, ideas for this kind of involvement. (Every time this was suggested in an interview, it immediately sparked ideas.) And arrangements for motion picture and still photography should be built into all personal appearance plans."

We are indeed fortunate, I am sure, in having such a handsome secretary of the interior. Perhaps you've seen some pictures of the fair Mr. Morton on TV or in the newspapers lately. I imagine, as the campaign warms up,we will be seeing a lot more of him.

Note that in this advice from Treleaven, the secretary's photogenic qualities are considered as a means of "building valuable goodwill for the Department and the administration."

This censored paragraph gives us a glimpse of just how the Nixon administration is packaging itself for the November election, in hopes that the American public will buy it, like so much detergent. We are actually expected to buy the actions of the administration because of a public official's good lucks!

The author of the study was Harry Treleaven, one time creative director for one of the largest advertising agencies in the country (J. Walter Thompson) -- a man experiencedin the techniques of TV commercials. Mr. Treleaven was the man who, in the 1968 campaign, devised the Nixon campaign strategy of selling the candidate in spot ads and a series of carefully controlled TV "interviews" with selected panels in different cities across the country.

The case of the censored paragraph is a silly incident, but a revealing one. It is symptomatic of the Nixon administration's cosmetic approach to government.